

2007

Bonneville Billing and Collections, Inc. v. Shari D. Harper : Brief of Appellant

Utah Court of Appeals

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G. Scott Jensen; Farr, Kaufman, Hamilton, Sullivan.

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Court of Appeals
IN THE UTAH SUPREME COURT

Bonneville Billing and Collections Inc.
[PLAINTIFF],

APPELLANT'S BRIEF

Plaintiff/Appellee,

vs.

Case No. [20070343]
District Ct. No. [060903085]

SHARI D. HARPER,
Defendant/Appellant

Class [number]

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Statement of Jurisdiction

Utah Code 78-2-2(4) The Supreme Court transferred this case to the appellate court. The Appellant recognizes this transfer in so far as it does not effect her retention of rights.

State of the Issues

To determine if the trial court lacked jurisdiction

A. Standard of Review

Correction of Error Standard

B. Supporting Authority

State v. Pena, 869 P.2d 932, 935-36 (Utah 1994) *S.S. v. State*, 972 P.2d 439, 440-41 (Utah 1998); *Orton v. Carter*, 970 P.2d 1254, 1256 (Utah 1998)
Mori v Mori 931 P.2d 854, 856 (Utah 1997) and Rule 12 of the Utah Rules of Civil Procedure, Rule 8 of the Utah Rules of Civil Procedure

Determinative Constitutional Provisions, Statutes, Ordinances, and Rules

Article I Section 1 of Utah State Constitution

“Article I, Section 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.”

Article I Section 2 of Utah State Constitution

Article I, Section 2. [All political power inherent in the people.]

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

Article 7 of Utah State Constitution

Article I, Section 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Article I Section 25 Utah State Constitution

Article I, Section 25. [Rights retained by people.]

This enumeration of rights shall not be construed to impair or deny others retained by the people.

Article V Section 1 Utah State Constitution

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

Article VI Section 1 of Utah State Constitution

Article VI, Section 1. [Power vested in Senate, House, and People.]

(1) The Legislative power of the State shall be vested in:

(a) a Senate and House of Representatives which shall be designated the Legislature of the State of Utah; and

(b) the people of the State of Utah as provided in Subsection (2).

(2) (a) (i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

(A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute; or

(B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature, to be submitted to the voters of the State, as provided by statute, before the law may take effect.

(ii) Notwithstanding Subsection (2)(a)(i)(A), legislation initiated to allow, limit, or prohibit the taking of wildlife or the season for or method of taking wildlife shall be adopted upon approval of two-thirds of those voting.

(b) The legal voters of any county, city, or town, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

(i) initiate any desired legislation and cause it to be submitted to the people of the county, city, or town for adoption upon a majority vote of those voting on the legislation, as provided by statute; or

(ii) require any law or ordinance passed by the law making body of the county, city, or town to be submitted to the voters thereof, as provided by statute, before the law or ordinance may take effect.

Article IV Section 10 of Utah State Constitution

Article IV, Section 10. [Oath of office.]

All officers made elective or appointive by this Constitution or by the laws made in pursuance thereof, before entering upon the duties of their respective

offices, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this State, and that I will discharge the duties of my office with fidelity.

Rule 8 of the Utah Rules of Civil Procedure

Rule 12 of the Utah Rules of Civil Procedure

Statement of the Case

A. *Nature of the Case*

This is a Debt Collection Case

B. Course of the Proceedings

C. Disposition at Trial Court

Relevant Facts with Record Citations

The Appellee's complaint is deficient and cites no cognizable cause of action (See Complaint on Record Index)

The Appellant raised the deficiency of the complaint in her answer (See Answer on Record Index).

The court held a trial on 12-01-06 in the Second District Court and found the Appellant indebted to the Appellee for the sum on the complaint. (See Judgment and Order date 01-09-2007 on the Record Index).

Summary of the Argument

The trial court lacked jurisdiction

Detail of the Argument

The Appellee believes that the Second District Court completely lacked jurisdiction over her and this issue as a complaint which has no cognizable right of recovery confers no responsibility nor authority upon the court to hear the case.

The allegations contained on the complaint are rights retained by the Appellant (if they are correct) as there is no violation of any law or statute as laid out by the legislative branch of government. The Judge, therefore, was not acting in his capacity and was acting in deference to his duty to uphold the rights of the defendant in deference to his oath of office and did usurp a right of the legislative branch of government and did “legislate from behind the bench” thereby creating law when he signed the judgment and the judgment was entered in the record. The Appellant believes it is unlawful.

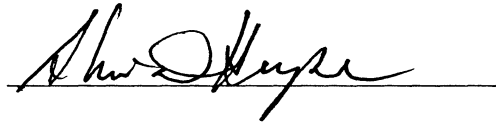
The Appellant did not show up for trial (although she requested an extension due to illness) and was not granted an extension. The Appellant believes since the court lacked jurisdiction, she did not have a duty to attend. The Appellant believes due to the oath of office taken (presumably) by the Brent West to uphold the constitution, he should have realized he did not have jurisdiction and should have immediately dismissed the complaint as would be consistent with his oath of office and contractual agreement with the people and the State of Utah.

The Appellant believes jurisdictional issues cannot be and have not been waived in this matter.

In addition, the Judge did not comply with his duty under Utah Rules of Civil Procedure and did not include findings of fact and the Plaintiff could not fulfill her obligation to the marshaling requirement, if it existed.

Conclusion and Relief Sought

The Appellant wishes to have this court order the trial court to stop attempting to assert improper authority over the Appellant and to forthwith dismiss the complaint and vacate the illegal order issued against her in this matter and to order the trial court to hear only valid complaints in his court as is consistent with the Constitution of this state.

A handwritten signature in black ink, appearing to read "Shari D. Harper", is written over a horizontal line.

Shari D. Harper (Appellant Pro Se)

ADDENDUM

Rule 8. General rules of pleadings.

(a) Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief; and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; form of denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleadings as if there had been a proper designation.

(d) Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be concise and direct; consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses.

When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of pleadings. All pleadings shall be so construed as to do substantial justice.

Rule 12 Rule 12. Defenses and objections.

(a) When presented. Unless otherwise provided by statute or order of the court, a defendant shall serve an answer within twenty days after the service of the summons and complaint is complete within the state and within thirty days after service of the summons and complaint is complete outside the state. A party served with a pleading stating a cross-claim shall serve an answer thereto within twenty days after the service. The plaintiff shall serve a reply to a counterclaim in the answer within twenty days after service of the answer or, if a reply is ordered by the court, within twenty days after service of the order, unless the order otherwise directs. The service of a motion under this rule alters these periods of time as follows, unless a different time is fixed by order of the court, but a motion directed to fewer than all of the claims in a pleading does not affect the time for responding to the remaining claims:

- (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action;
- (2) If the court grants a motion for a more definite statement, the responsive pleading shall be served within ten days after the service of the more definite statement.

(b) How presented. Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted.

No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to

dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearings and determination thereof be deferred until the trial.

(e) Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is

not obeyed within ten days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after the service of the pleading, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses. A party who makes a motion under this rule may join with it the other motions herein provided for and then available. If a party makes a motion under this rule and does not include therein all defenses and objections then available which this rule permits to be raised by motion, the party shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

(h) Waiver of defenses. A party waives all defenses and objections not presented either by motion or by answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise

that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15(b) in the light of any evidence that may have been received.

(i) Pleading after denial of a motion. The filing of a responsive pleading after the denial of any motion made pursuant to these rules shall not be deemed a waiver of such motion.

(j) Security for costs of a nonresident plaintiff. When the plaintiff in an action resides out of this state, or is a foreign corporation, the defendant may file a motion to require the plaintiff to furnish security for costs and charges which may be awarded against such plaintiff. Upon hearing and determination by the court of the reasonable necessity therefor, the court shall order the plaintiff to file a \$300.00 undertaking with sufficient sureties as security for payment of such costs and charges as may be awarded against such plaintiff. No security shall be required of any officer, instrumentality, or agency of the United States.

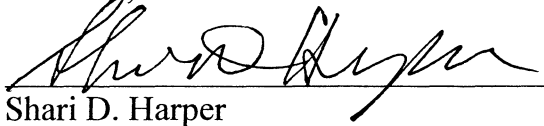
(k) Effect of failure to file undertaking. If the plaintiff fails to file the undertaking as ordered within 30 days of the service of the order, the court shall, upon motion of the defendant, enter an order dismissing the action.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Appellant's Brief was personally delivered to Utah Appellate Court and by class mail this 10-29-07 to Bonneville Billing and Collections:

BONNEVILLE BILLING AND
COLLECTIONS

PO BOX 150612
OGDEN, UT 84415


Shari D. Harper

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